

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Case No. 13-CR-0014 (PJS/FLN)

Case No. 16-CV-02133 (PJS)

Plaintiff,

v.

ORDER

CHRISTOPHER LEE ROUSSEAU,

Defendant.

Defendant Christopher Rousseau pleaded guilty to one count of being a felon in possession of a firearm. After finding that Rousseau was subject to the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e), the Court sentenced him to 180 months in prison and 5 years of supervised release. ECF No. 54. Rousseau did not file a direct appeal. The Court later denied Rousseau’s first 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. ECF No. 59.

While Rousseau’s appeal from that order was pending, the Supreme Court decided *Johnson v. United States*, 135 S. Ct. 2551 (2015), which held that the residual clause of the ACCA is unconstitutionally vague. More recently, the Supreme Court held that *Johnson* announced a new substantive rule that applies retroactively on collateral review. See *Welch v. United States*, 136 S. Ct. 1257 (2016). The Eighth Circuit then remanded this case for further consideration in light of *Johnson*. ECF No. 68.

The government agrees that, under *Johnson* and *Welch*, Rousseau no longer qualifies as an armed career criminal and that his sentence should be vacated. ECF No. 72. Accordingly, the Court will grant Rousseau's § 2255 motion.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Defendant's supplemental motion to vacate, set aside, or correct his sentence [ECF No. 71] is GRANTED.
2. Defendant's sentence [ECF No. 54] is VACATED.
3. United States Probation and Pretrial Services is directed to prepare an amended presentence investigation report reflecting that defendant is not subject to the Armed Career Criminal Act. The parties may then object to the report and file sentencing position papers in accordance with the Federal Rules of Criminal Procedure and D. Minn. L.R. 83.10.

Dated: July 18, 2016

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge